Randall Division of Textron, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW. Case 25–CA–19864

December 31, 1990

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On May 2, 1990, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

[1] The Respondent has excepted to certain credibility findings made by the judge. It is the Board's established policy not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We agree with the judge that under the particular terms of the settlement agreement the Union was entitled to a reasonable period of time following the expiration of the 18-month moratorium in which to bargain. Further, even if under the terms of that agreement the Respondent could raise a good-faith doubt of the Union's majority status after the 18-month moratorium, we find, for the reasons set forth by the judge, that the Respondent failed to establish that it had a good-faith doubt when it withdrew recognition from and refused to bargain with the Union. We thus find it unnecessary to pass on his use of the term ''irrebuttable presumption.''

The judge incorrectly stated that the 10 employees who had conversations with the Respondent about the Union constituted ''less than one half of one percent of the hourly employees.'' Because the Respondent had over 200 hourly employees, those 10 employees represent about 5 percent of the hourly employees. This error, however, in no way affects our finding that the Respondent failed to establish that it had a good-faith doubt of the Union's majority status.

Member Oviatt fully agrees with the judge that the Respondent and the Union entered into a binding settlement agreement that required the Respondent to bargain with the Union, on request, after the expiration of 18 months from the date that the Respondent received clear title to the facility in issue here. When it came time to bargain, however, the Respondent refused. Settlements play a significant and important role in labor relations, and the Board's policy of encouraging settlements is clear and established. See *Independent Stave Co.*, 287 NLRB 740 (1987). When, as here, a party reneges on its settlement agreement, the substantial policy favoring settlements is undermined. In Member Oviatt's view, this Respondent's action, in failing to honor a settlement agreement freely made, has resulted in a waste of the Board's limited resources and has done a serious disservice to the national labor policy.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Randall Division of Textron, Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Mark Dabertin and *Rick Lineback, Esqs.*, for the General Counsel.
Hudnall A. Pfeiffer and *Todd Nierman, Esqs.*, of Indianapolis, Indiana, for the Respondent.
Janice Kreuscher and *Barry A. Macy, Esqs.*, of Indianapolis, Indiana, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. Based on a charge filed April 3, 1989, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (Union), the Regional Director for Region 25 issued a complaint and notice of hearing dated May 25, 1989, alleging that Randall Division of Textron, Inc. (Randall or Respondent) by withdrawing recognition from and refusing to bargain with the Union has violated Section 8(a)(1) and (5) of the National Labor Relations Act (Act).

A hearing was held in this matter on November 14 and 15, 1989, in Indianapolis, Indiana. Briefs were received from the parties on or about March 16, 1990. Based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Randall Division of Textron, Inc. is a corporation with an office and place of business, as pertinent, in Morristown, Indiana, where it engages in the manufacture of plastic parts used, inter alia, in the automotive industry. Respondent has admitted the jurisdictional allegations of the complaint and I find that it is now and has been at all times material to this proceeding, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It was admitted by Respondent and I find that International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Complaint Allegations*

The complaint alleges that since 1978, the Union has been the exclusive bargaining representative of a unit[1] of employees at the involved Morristown, Indiana facility. In 1986, Respondent took over the facility from American Carco, Inc., and with the approval of an administrative law judge of the Board in July 1987, entered into a private non-Board settlement agreement in Case 25–CA–18504, in which, inter alia, the Respondent agreed to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the involved unit. The settlement agreement also called for an 18-month moratorium on bargaining between Respondent and the Union. In March 1989, after receiving a request for bargaining from the Union, the Respondent refused to bargain and withdrew recognition from the Union stating that it had a good-faith belief that the Union did not have majority status. The complaint further alleges that Respondent's conduct violated Section 8(a)(1) and (5) of the Act.

B. *The Facts Giving Rise to the Dispute*

1. Events leading to the July 13, 1987 settlement agreement

Respondent operates eight manufacturing facilities and recognizes unions, including the involved Union, at all of these facilities except at Morristown. The Morristown, Indiana plant of Respondent produces molded plastic parts for automotive and nonautomotive customers. The Respondent took over the operation of this plant from American Carco of Indiana, Inc. (ACI) after that company declared bankruptcy and ceased operations in December 1986. The takeover was pursuant to a lease-purchase agreement with the bankruptcy court which was terminable at will on 60 days' notice and which expired on December 31, 1987. Under this agreement, custody of the plant passed to the Respondent on December 19, 1986, and the plant resumed operations on January 5, 1987.

The Union and ACI were parties to a collective-bargaining agreement, which was to have remained in effect until November 15, 1987. Since 1978, ACI had recognized the Union as the collective-bargaining representative of the above-described unit of its employees. Because of its representational status, representatives of the Respondent and the Union met in early December 1986. At this meeting Respondent informed the Union of its plans to consolidate the operations of its South Haven, Michigan and Cambridge, Ohio plants into the Morristown plant. It was understood by both parties that with this new work, the work force would eventually expand to approximately 500 employees and the product mix of the Morristown plant would change. Additionally, the new products would be molded from different types of plastic resins and in different colors than the products that ACI had produced.

The Union requested recognition from the Respondent at this meeting, but the Respondent denied that it was a successor to ACI and declined the Union's request. Respondent's witness claimed that at this meeting and at subsequent meetings, the Union's representatives wanted immediate recognition as the exclusive bargaining representative for Respondent's Morristown employees to keep other unions from being able to organize the plant. The Union's witnesses denied making such a statement. I credit their denial. The Union was legitimately claiming that Respondent was a successor to ACI and was already the designated representative of the involved employees.

Representatives of the two parties met for a second time in February 1987, after the Respondent had begun operations at the plant. The Union again requested recognition and the Respondent again declined to extend it. The Union based its demand for recognition on Respondent's having acquired the assets of ACI, including the real estate, improvements to the real estate, machinery and equipment, and Respondent's engaging in the same business operation, at the same location, with the same supervisors, selling the same products to substantially the same customers, and having as a majority of its employees, individuals who were previously employed by ACI and who were members of the bargaining unit represented by the Union. During the first several months Respondent operated the facility, the work was the same as had been done by the plant's previous owner. The product was primarily small molded plastic products that were plated, painted, and sometimes molded on the premises and were used in the automotive and appliance industries. The Union responded to this refusal by filing a charge with the Board on February 17, 1987. Following an investigation, the Regional Director issued a complaint in Case 25–CA–18504, which, inter alia, alleged that Respondent was a successor employer to ACI. The Regional Director additionally filed suit in Federal district court seeking 10(j) injunctive relief.

On July 13, 1987, a hearing was held in this case. At that time, the Morristown facility had approximately 100 hourly employees working primarily in molding, painting, tool and die, maintenance, and plating departments. The hourly employees had a common orientation procedure, work rules, worked in a single building, shared restrooms, a lunchroom breakroom, and parking lot, and were subject to the same rules and procedures of shift preference, leaves of absence, overtime, and complaints. In July 1987, the Morristown facility was producing the same small plastic products with the same equipment it had used since December. Shortly after the hearing was convened, the Respondent and the Union agreed to conduct off-the-record settlement negotiations. The negotiations resulted in the execution of a document entitled, ''Memorandum of Agreement.'' This document reads as follows:

> 1. The Union will withdraw its pending 8(a)(5) charge, with prejudice.
>
> 2. The Union recognizes that, based on its withdrawal of the charge, the Board will dismiss the Section 10(j) petition currently pending before the United States District Court for the Southern District of Indiana, Indianapolis Division.

[1] The involved unit is described as follows:

All production, laboratory and maintenance employees employed at the Morristown, Indiana facility, but excluding employees who regularly work less than forty (40) hours per month, management trainees, assistant foremen, expediters, layout men, time study men, estimators, draftsmen, administrative personnel, office clericals, professional employees and all guards and supervisors as defined in the Act.

3. The Union will withdraw its pending 8(a)(3) charge with prejudice.

4. Randall will grant recognition to the International Union, UAW, and its Local 2052 as the exclusive collective bargaining representative for an appropriate production and maintenance unit at Randall's Morristown, Indiana, plant, effective upon the approval of the withdrawal of the above-described charges.

5. The Union agrees that there will be a total moratorium on any obligation by Randall to bargain over wages, hours and other terms and conditions of employment for a period of eighteen (18) months from the date Randall receives clear title to the Morristown plant real estate and improvements as evidenced by its receipt of valid deeds, with the exception identified in paragraph 6.

6. Six months after Randall receives clear title as described in paragraph 5, the Union may file a grievance for a non-probationary employee within the appropriate production and maintenance unit who has been discharged from employment with Randall, alleging that the discharge was for other than just cause. Such grievance must be filed within five (5) days of the date of discharge. Such grievance will be subject to a one-step grievance procedure in which the Company's Vice-President for Personnel and the Union's International Representative, or their designated representatives, shall meet to discuss the grievance. If, following such discussion, the Union determines to take the discharge grievance to arbitration, it shall so notify the Company within ten (10) days from the grievance meeting, and the parties thereafter shall select a mutually agreeable arbitrator independently or from a panel submitted by the Federal Mediation & Conciliation Service. The losing party shall pay the cost of the arbitrator. Any dispute about the employee's status as a non-probationary employee within the appropriate production and maintenance unit shall be resolved by the arbitrator for the purpose of application of this grievance procedure only. The arbitrator's decision will be final and binding on the Company, Union and employee and the Union agrees that it will not initiate or sanction any strike or other concerted activity regarding the discharge.

To the extent that any testimony given by the witnesses at the instant hearing conflicts with the clear terms of the above agreement, I wholly discredit such testimony. Further, to the extent that the testimony of Respondent's witnesses conflicts with that of the Union's witnesses with regard to the agreement, I credit the testimony of the Union's witnesses and discredit the opposing testimony of the Respondent's witnesses. Specifically, I credit the testimony of witness Richard Swanson over that of Robert Hicks and David Shane to the extent of any conflict between them. I based this determination of my observation of the testimony and the relationship between that testimony and other evidence of record.

The 18-month ''moratorium'' on bargaining resulted from a compromise between the Union's desire to have immediate bargaining and the Respondent's desire to have a period of time in which to do business without being challenged on a grievance or dealing with the Union subsequent to recognition. The term ''moratorium'' was carefully selected by the parties.[2] It was the Union's understanding, based upon the statements of the Respondent's representatives, that the parties would enter into collective-bargaining negotiations following the 18-month moratorium. There was no mention by any party that the Union would have to establish majority status before bargaining would commence. It is also important to note that at the time of the execution of the agreement that both parties recognized that the involved plant's operation would expand to a considerable degree and that its product mix would likewise expand. I do not credit the testimony of Respondent's witnesses that their understanding of the agreement was that if the Union did not have majority status after 18 months, there was no obligation to bargain; and to the contrary, credit the testimony of witness Swanson that Respondent's representatives stated that Respondent would bargain after 18 months.

I find that the clear import of the language of the agreement, including the accepted definition of the word moratorium, leads only to the conclusion that Respondent extended unqualified recognition to the Union as the exclusive representative for collective bargaining for an appropriate unit of Respondent's employees, and that bargaining over the terms of a collective-bargaining agreement would begin, upon request, after the passage of 18 months. The very terms of the agreement also make it obvious that withdrawal of charges by the Union was the quid pro quo for Respondent's immediate full recognition. Such recognition also carries with it the legal obligation to bargain. That the parties recognized this obligation is also obvious, as they felt it necessary to agree to a moratorium on bargaining in order to delay the start of negotiations. The agreement's unit description of ''an appropriate production and maintenance unit'' was the result of a compromise between the Respondent and the Union regarding some laboratory workers. The Union had proposed that the unit in the agreement should be identical to the unit set forth in the collective-bargaining agreement with ACI. The Respondent rejected this proposal because it included the laboratory workers, who are salaried employees. The parties agreed to use the word ''appropriate'' to settle this argument. The parties believed that disputes over the contours of the unit could be resolved either in negotiations or arbitration.

The grievance procedure in the agreement was also a compromise of position. Originally the Union sought a multistep grievance process where anything could be grieved, but the Company would agree only to a one-step grievance process for discharges of nonprobationary personnel providing that the international representative, rather than an employee, serve as the Union's representative. Respondent's goal was to have as little interference in its day-to-day operations as possible during the moratorium period. In exchange for the grievance procedure, the Union agreed to a no-strike provision.

The ''Memorandum of Agreement'' was considered by all parties at the hearing on Case 25–CA–18504 to be a settlement agreement. The transcript of the proceeding held before Administrative Law Judge Robert Leiner, in pertinent part, reads as follows:

[2] Webster's Seventh New Collegiate Dictionary defines the word moratorium as follows: 1. a: a legally authorized period of delay in the performance of a legal obligation or the payment of a debt; b: a waiting period set by an authority; 2: a suspension of activity.

JUDGE LEINER: . . . it is my understanding, General Counsel, that the parties have been wise enough to come to an understanding, which settles this and other litigation, is that correct?

GENERAL COUNSEL: That's correct.

JUDGE LEINER: Mr. Swanson (Union Counsel), do you agree to come to a settlement satisfying to the Union?

MR. SWANSON: Yes.

JUDGE LEINER: And you agree, too, Mr. Shane (Respondent's Counsel)?

MR. SHANE: Yes.

JUDGE LEINER: . . . and in an off the record discussion, since this is a non-board disposition of the case, neither the Union, or the Respondent-Employer desires the settlement to be made part of the record, is that correct, Mr. Swanson?

MR. SWANSON: Yes, that is correct.

JUDGE LEINER: The parties, as I understand it, are not desirous of having the settlement on the record, is that right?

MR. SWANSON: Yes.

MR. SHANE: Yes.

JUDGE LEINER: All right. I won't mention any of the terms, although I have reason to believe I know some of the terms, but it's satisfactory to the Union, is that right?

MR. SWANSON: Yes.

JUDGE LEINER: And to the Company?

MR. SHANE: Yes, sir.

JUDGE LEINER: All right. Now we go to the General Counsel. General Counsel, are you familiar with the terms and conditions of the settlement?

GENERAL COUNSEL: Yes, sir.

JUDGE LEINER: As far as the General Counsel representing the region goes, is it your position that you will not oppose the settlement?

GENERAL COUNSEL: Yes, General Counsel does not oppose the settlement.

MR. SWANSON: The Union moves to withdraw its pending 8(a) [sic] and Section 8(a)(3) charges.

JUDGE LEINER: All right. There is not 8(a)(3) charge before me, counselor. That's another matter. But it is part of the settlement, then for purposes of this record to withdraw all the charges?

MR. SWANSON: Yes.

JUDGE LEINER: Fine. I can, of course, act only on the charge in 25–CA–18504, but you may technically have to deal with that other charge before Mr. Little, the Regional Director, but it is your intent, nevertheless, to withdraw all the charges?

MR. SWANSON: Yes.

JUDGE LEINER: Is there any opposition?

MR. SHANE: No.

JUDGE LEINER: Hearing none, your motion to that extent is granted.

JUDGE LEINER: General Counsel?

GENERAL COUNSEL: General Counsel moves to dismiss or withdraw the complaint in 18504.

JUDGE LEINER: The motion is granted. ''There being nothing further to come before me, . . . I'm going to close this hearing absolutely, because as I understand it, . . . the parties are satisfied with the status of their agreement, establishing . . . a recognized relationship.''

In turn, the Regional Director approved the withdrawal of charges and additionally withdrew the Board's petition for injunctive relief before the Federal district court. Clearly, the ''Memorandum of Agreement'' was a settlement agreement of the involved charges. The Board's involvement in the settlement was substantial as Judge Leiner, with knowledge of at least the most important feature of the settlement, approved the withdrawal of charges and thus approved of the settlement. His approval was also with the blessing of the General Counsel who knew all the terms of the settlement. The Regional Director, who is presumed to have known the terms of the agreement, based upon the General Counsel's knowledge, also approved the settlement by approving withdrawal of charges and dismissal of the attendant law suit.

2. Events leading to the respondent's withdrawal of recognition and refusal to bargain

In August 1987, the plant was still producing small molded plastic parts which were often plated on the premises. Products included automotive wheel covers, appliance bases, and trim for auto headlights. The basic process for most of the parts was the same. Plastic was injected in molds and the molded part was then trimmed and packed. The packed parts were inspected and, if approved, were sent to be pointed, plated, or shipped. Despite any expansion that occurred over the 2 years, the basic process would remain the same as would the basic job functions of the tool and die makers, molders, painters, platers, etc., who produced the parts. In March 1989, the Respondent was using some different resins in its molding process, it had improved quality controls, had created a new classification of employee to do ''fixturing,'' had modernized its paint department, and had more than doubled the work force. It contends that many of the jobs performed in March 1989, though essentially the same classification of job performed in 1987, required a higher degree of training or skill. I have difficulty accepting this evidence at face value in light of the fact that the company was constantly securing new workers from a personnel referral company and was experiencing a high turnover of employees. The turnover indicates to me that the jobs involved were fairly simple to learn and the referred employees were not shown to possess any special skills or training. The most significant change in the Respondent's operation from 1987 to 1989 was its growth, not what it produced or how it produced its products.

The Union's first written contact with the employees of the Respondent subsequent to the execution of the settlement agreement was a letter dated September 8, 1987. In this letter, the Union advised the employees, inter alia:

> As part of the settlement (see enclosed Memorandum of Agreement), the Randall Company agreed to recognize the Union immediately upon the Union's withdrawal of all out-standing charges and litigation before the National Labor Relations Board. The Union in return agreed to *delay* contract negotiations until eighteen (18) months after Randall Division of Textron, Incorporated obtains clear title to the property and buildings.
>
> . . . .

> When Randall Company Division of Textron, Incorporated granted recognition to the Union it was the equivalent of winning an organizing election before the National Labor Relations Board. I realize that some employees were worried about speaking to me and about joining the Union. As a recognized Union you will need to sign membership cards, if you wish to join for the upcoming Local Union elections. There will be no dues deducted for membership in the UAW until we have a signed contract with Randall, approximately eighteen (18) months from today.
>
> I am enclosing a Union membership card for each of you to fill out and return to my office. Again, remember that *this card is not needed to gain recognition*, but only to verify union membership for the upcoming Union election.

Because the terms of the agreement did not permit bargaining until the expiration of the 18-month moratorium and because it did not contemplate a role for local officers in the grievance process, no local union elections were scheduled during 1987 or 1988. However, the Union International representative assigned to the facility testified that he kept in touch with bargaining unit personnel and would have investigated and possibly filed grievances pursuant to the agreement had affected employees sought his assistance. No one did.

On September 19, 1988, the Union wrote to Robert Hicks, a vice president of Respondent, requesting information in preparation for collective-bargaining negotiations, which the Union believed ''should commence on or about March 1, 1989.'' The letter also requested permission to post written notices in the plant, ''[i]n order to insure each employee is informed of upcoming important meetings . . .'' Hicks responded to this letter by a letter of his own, dated December 14, 1988, to which he attached information that the Union had requested. Additionally, in lieu of permitting the Union to post notices, Hicks furnished the names of the employees and their addresses. The Union in turn wrote back to Hicks on December 19, 1988, acknowledging that it had received all of the information that it required for bargaining.

On January 5, 1989, the Union wrote to the employees advising them of meetings to be held regarding the status of contract negotiations with the Respondent. These meetings were held during the morning and afternoon of January 11, 1989. At these meetings, Union Representative Max Jeffrey explained to bargaining unit members that the Union had been recognized almost 2 years before and that bargaining was scheduled to begin soon, necessitating an election of a bargaining committee. Accordingly, Union adherents agreed to start soliciting membership cards to demonstrate support during the upcoming negotiations and to verify membership for internal elections. No effort was made to use cards to organize the plant and, in fact, the yellow membership cards being distributed were not the green cards used in UAW organizing drives.

The Union's next communication to the Respondent's employees was a letter dated February 21, 1989. This letter announced that ''Bargaining Representative[s]'' would be elected at a meeting to be held on March 1, 1989. At this meeting, four employees were elected to bargaining representative positions. They later were identified to the Respondent in a letter sent by the Union to Hicks, dated March 10, 1989, in which the Union also advised Hicks that it would be in touch with him to arrange dates for negotiations.

The bargaining representatives first meeting for formulating negotiating strategies was scheduled for Saturday, March 11, 1989. One of the newly elected representatives, Harold Davis, was scheduled to work on that day. Davis was concerned about the possibility that he would be charged with an unexcused absence if he chose to attend the meeting. Thus, Davis went to the Morristown plant's personnel manager, Harry Parker, on Friday morning, March 10, 1989. Davis asked Parker if his absence on Saturday would be excused or unexcused. Parker responded by telling Davis that he was unaware of anything to do with the Union and would have to ask Hicks. On cross-examination, Parker admitted that the plant manager, Tom Collins, had told him back in January 1989, that the Union believed that it had gained recognition without an election through the memorandum of agreement. In this conversation, Davis stated that he believed that a majority of the employees had signed union cards. Parker testified that this statement was in the context of the Union having enough cards to organize the plant. As will be discussed later in this decision, I do not find it significant whether Davis used or did not use the word ''organize'' in this conversation. Based on Parker's earlier conversation with Plant Manager Collins, he knew the Union believed it was already recognized.

Parker discussed this conversation with Hicks who definitely knew the Union had been previously recognized and who personally had acknowledged the status of the Union by, inter alia, responding completely to the Union's September 1988 information request. Both Hicks and Parker testified about conversations they had with hourly employees in the period January–March 1989, which they believed indicated employee dissatisfaction with the Union. Hicks testified that on an unspecified date at an unspecified time, employee Barbara Theobold made a statement to him and Parker to the effect that she had been unhappy with UAW representation at a previous employer's facility and did not want to be represented by the UAW.

Between January and March 1989, during the membership solicitations, 10 hourly employees of Respondent spoke with Parker about the union solicitation. At this time, the Company had over 200 hourly employees. Parker testified that in general, these employees approached him because they were concerned about their job security if they signed a union card. They were concerned whether they would still have a position with the Company if they did so sign. Specifically, Parker testified that on an unspecified date in January 1989, in addition to Theobold's conversation, employee Sena Brandenburg told him that she had been a UAW member at a another employers facility and was dissatisfied with UAW representation at that facility. She further stated that she would not join or be represented by that union at Morristown. She would quit first. With regard to this conversation, it was shown that the UAW does not represent the facility she mentioned.

Parker further testified that on an unspecified date in January, he had a conversation with employee John Collins. Although Parker could not recall the words used in the conversation, the import of it was that Collins did not want to join the Union and wanted to know if he could keep his job

if he did not join. Parker testified that employee Diane Tressler asked him whether or not she had to sign a union card to maintain employment with the Company. Tressler was a lead person with Respondent at the time. Employee Les Becraft told Parker that the Union had asked him to run for union office and he did not want to run. He did not want the Union to represent him and wanted to make sure he had a job if he did not sign a union card. Parker testified that around March, employees Christy Owens and Ruth Self came to his office and after asking some general questions about unions, asked if they would be able to keep their jobs if they did not sign a union card. In the last week of March, employee Cindy Callahan came to his office and said that a fellow employee had told her that if she did not sign a union card, she would not be able to keep her job. Parker in later testimony remembered that in January or February, two other employees, Rebecca Karnes and Jim Phillip had expressed concern over job security if they did not sign union cards. At the hearing, Parker could not remember exactly what each of the 10 had said, but remembered that the message they had given him was that they did not want to be represented by the Union.

This evidence of employee conversations was offered by Respondent to demonstrate what formed the basis for what it claims is a good-faith doubt about the Union's majority status, which doubt arose for the first time after the March 10 letter requesting bargaining. As a factual matter, much less a legal one, I cannot find that the conversations with employees set out above could rationally give rise to a good-faith doubt of the Union's majority status. First the conversations took place over a 3-month period and in the best light for Respondent, can only be considered to be isolated expressions of dissatisfaction. Additionally, these expressions came from less than one half of one percent of the hourly employees. I also believe that the conversations truly were expressions of employee concerns over whether joining the Union was mandatory rather than expressions of concern over representation by the Union. In any event, I do not believe these 10 conversations could lead to a good-faith doubt that the majority of the Respondent's hourly employees did not want to be represented by the Union.

At some point between March 10 and 20, 1989, Hicks discussed the Union's March 10 request to bargain with the Respondent's legal counsel. Based on these discussions, an idea of having the Union prove its majority support to a third party emerged. Hicks testified that this request for a card check was prompted by the Parker–Davis conversation and by the conversations with the other employees noted above. I do not believe this testimony is credible. I have already found that the 10 employee conversations noted above could not rationally form the basis for a good-faith doubt. Even giving full credit to Parker's version of the conversation, Davis only said that the Union had sufficient cards to organize the plant. He did not specify in any manner how many cards the Union possessed. I find it patently unbelievable that an off-the-cuff remark from an hourly employee that the Union had signed cards from a majority of Respondent's employees could lead Hicks to the conclusion that the Union did not have majority support. On the other hand, I find it very easy to believe that in trying to find a way out of its bargaining obligation, Hicks and his counsel would seize on a card count to try to force the Union to prove its majority status.

Thus, on March 20, 1989, Hicks called Union Representative Jeffrey, who was at home in the shower. Hicks began the conversation by telling Jeffrey that he had received a letter from Jeffrey requesting bargaining and that he was calling in response to this request. Hicks then informed Jeffrey that the Respondent would only bargain with the Union if the Union agreed to have a third party count union cards to determine whether or not the Union had majority support. Jeffrey responded to this by telling Hicks that he believed that the Union already had recognition through the memorandum of agreement. Jeffrey further stated that he wanted to have the Union's lawyers review the agreement and that in the interim, he would like Hicks to provide him with the number of people who Hicks felt were in the unit.[3] Hicks telephoned Jeffrey with the number of employees in the unit on March 22, 1989.

Jeffrey's next contact with Hicks was by letter. On March 28, 1989, Jeffrey wrote to Hicks, rejecting the Respondent's proposed card count and advising Hicks that the Union did not consider employees of Manpower, Inc.[4] to be included in the unit.

Hicks responded to Jeffrey's March 28 letter, in a letter dated March 31, 1989. In his letter, Hicks, on behalf of the Respondent, stated that the Union's refusal to submit to a card count ''suggests to us that the UAW does not have majority status.'' Hicks additionally asserted that ''the law does not permit an employer to bargain with a union unless it has majority status.'' Hicks then discussed the Respondent's rationale for including Manpower employees in the unit and concluded the letter of position by stating that ''we do not believe that a dispute about the total numbers of employees is reason to delay a card count.''

Jeffrey reacted to Hicks' March 31, 1989 letter by filing a charge with the Board on April 3, 1989. The charge alleges that the Respondent has violated Section 8(a)(5) of the Act by refusing to abide by its commitment to bargain pursuant to the memorandum of agreement. The charge additionally requests 10(j) injunctive relief. Following an investigation of the allegations set forth in the charge, the Regional Director issued a complaint which alleges that the Respondent has violated and continues to violate Section 8(a)(1) and (5) of the Act by refusing to bargain with the Union.

[3] Hicks testified that Jeffrey initially agreed to a card count. Jeffrey testified that he never agreed to the count, but told Hicks that he would have to look at the memorandum of agreement which was at his office. I credit the testimony of Jeffrey in this regard as his position is consistent with all of his other actions and because Hicks was a less than credible witness.

[4] In November 1988, Respondent began using Manpower and Personnel Management as referral sources for employees. Initially the arrangement was that 90 days after the referral the employee was placed on Respondent's payroll. In December 1988, Respondent and Manpower negotiated a shorter referral period of 6 to 8 weeks. Under the agreement after 6 to 8 weeks, a referred employee was converted to the Respondent's payroll. Pursuant to the agreement, Respondent used Manpower as its exclusive source for referrals. In January 1989, Respondent and Manpower shortened the period to 3 to 5 weeks. Typically, a referred employee would be evaluated in his third week and converted to Respondent's payroll in his fourth week of employment. The purpose of shortening the referral period was to reduce turnover. Generally, the evidence reflects that Respondent treated Manpower referred employees much like it would its own probationary employees during the referral period. Several hundred employees had been referred under this process, though not many stayed evidently, as the Respondent only employed about 250 employees as of March 1989.

C. *Did Respondent Violate the Act by Refusing to Bargain*

Settlement negotiations were initiated by Judge Leiner at the hearing for Board Case 25–CA–18504, which included, inter alia, a claim that the Respondent was a successor employer to ACI. The Union and the Respondent agreed to conduct off-the-record settlement negotiations, which resulted in a settlement agreement titled, ''Memorandum of Agreement.'' In pertinent part, the terms of the agreement granted the Union immediate recognition, albeit, subject to a mutually agreed-on 18-month delay in bargaining over wages, hours, and other terms and conditions of employment, which was to run from the date on which the Respondent received clear title to the Morristown plant.

As the quid pro quo for the grant of recognition, the Union, with the judge's knowledgeable approval and the General Counsel's knowledgeable approval, withdrew its charges in Cases 25–CA–18504 and 25–CA–18713. In addition, the Regional Director approved the withdrawal of the charges and additionally withdrew the Board's petition for injunctive relief.

On March 10, 1989, at roughly the time at which the Union had calculated bargaining should commence, the Union contacted the Respondent regarding setting up dates for negotiations. In response to this request, the Respondent attempted to impose preconditions to bargaining that appear nowhere on the face of the settlement agreement. In particular, the Respondent demanded that the Union submit to a card count to test its majority status.

When the Union refused to submit to the card check, which it was not required to do by either the terms of the settlement agreement or by Board law, the Respondent unequivocally communicated to the Union that it was refusing to bargain.

The Respondent offered a number of defenses to the alleged violation of the Act, none of which has merit in my opinion. Its primary defense is that the Union lacked majority support among Respondent's employees at the time the bargaining request was made and that it would have been unlawful for it to bargain with a minority union. I will address this defense in a later part of this decision because I believe that under the circumstances of this case, the matter of majority support, vel non, is not determinative of the Respondent's duty to bargain with the Union. It is my belief and finding that Respondent and the Union entered into a settlement agreement which required the Respondent to bargain with the Union, upon request, after the expiration of 18 months from the date Respondent received clear title to the involved facility. I further find that the Union enjoyed an irrebuttable presumption of majority status for a reasonable period of time, which period of time did not start until the 18-month moratorium passed. Therefore, the Respondent had not afforded the Union a reasonable period of time to represent its employees when it refused to bargain with the Union in March 1989 and its refusal violated the Act, as alleged in the complaint. My reasons for these findings will be discussed fully below.

1. The memorandum of agreement was a binding settlement agreement imposing a duty to bargain upon Respondent

The ''Memorandum of Agreement'' is a settlement agreement, rather than a collective-bargaining contract as urged by Respondent. The agreement, unlike a collective-bargaining contract, does not contain specific provisions as to wage, hours, and working conditions for a specified time. Rather, the agreement contains concessions relating to the allegations contained in the complaint, which cannot be logically separated from the Union's withdrawal of its charges. See *Straus Communications*, 246 NLRB 846 (1979), affd. 625 F.2d 458 (1980). The uncontested facts and the terms expressed on the face of the agreement clearly demonstrate that the Union withdrew its charges in exchange for recognition and its attendant obligation to bargain; albeit, following an 18-month moratorium. Hence, the withdrawal of the charges was the quid pro quo or consideration for the Respondent's concessions, which were as follows: a commitment to implement a grievance procedure, recognition of the Union as the collective-bargaining representative of the production and maintenance employees and a commitment to bargain 18 months from the date on which it received clear title to the Morristown plant.

The addition of the abbreviated grievance procedure, arbitration mechanism, and no-strike provision do not in my mind convert the settlement agreement into a collective-bargaining agreement. The items were made necessary because of the agreed-on 18-month moratorium before bargaining would begin. Having granted recognition to the Union, but withholding bargaining over a collective-bargaining agreement for 18 months, the Union's role at the facility for the 18-month period must of necessity be defined. I find that the establishment of the grievance procedure as well as the no-strike provision does nothing more than to define the limited role to be played by the Union until the moratorium passed, and bargaining over its full role could begin.

2. The unit description contained in the agreement does not relieve Respondent of duty to bargain

The fact that the parties were unable to reach agreement as the precise scope of the unit does not preclude enforcement of the memorandum of agreement as a settlement agreement. The Board has approved of an ''appropriate unit'' language in the past. In *Van Ben Industries*, 285 NLRB 77 (1987), for example, the parties entered into a non-Board settlement agreement whereby the company agreed to ''recognize the Union as the sole and exclusive bargaining agent for its production employees in an *appropriate unit*'' in exchange for the Union's withdrawal of unfair labor practice charges relating to the successor employer's refusal to recognize the union. After the company refused to abide by the settlement agreement, the Board found that the company had violated the Act by refusing to bargain with an ''appropriate bargaining unit'' that was identical to the unit that had been recognized by the successor employer's predecessors.

Further, as the Board noted in *Straus*, 246 NLRB at 847:

> It is immaterial that the agreement may not have fully resolved every allegation in the complaint, as Respondent would have it do, because the agreement, taken as a whole, clearly settled to the satisfaction of the Respondent and the Union the outstanding complaint. The agreement, therefore, is a typical settlement agreement warranting application of the *Poole Foundry* test of determining whether ''a reasonable time has elapsed between the execution of the settlement agreement and the refusal to bargain,'' in which the parties may bargain free from any question of the union's majority status.

On brief, Respondent does defend its actions based on a question of what constitutes an appropriate unit. The only serious question raised about the scope of the bargaining unit is concerning whether the Manpower, Inc. employees should be included or excluded from the unit. This question is only raised in the context of Respondent's majority status argument to increase the size of the unit in relation to the number of membership cards the Union had secured. At the negotiations which lead to the involved settlement agreement, the parties agree that there was some dispute as to whether laboratory employees should be exluded, and there was perhaps some dispute over lead persons and plant clericals. The parties knew that during the moratorium period, the plant's operations would expand and that some changes in the manner of operation might occur. The anticipated expansion and changes presumably were addressed when the agreement was drafted in 1987 and the phrase ''appropriate unit'' was chosen. However, there has been no showing in this record why the historical unit description set out in this decision (see fn. 1) is not currently appropriate.

As noted by the General Counsel on brief, Hicks testified that as of July 1987, ''production was production out in the plant and maintenance was maintenance in the plant.'' Nothing presented in the evidence would make this statement any less true as of March 1989. The proper focus in determining whether a particular bargaining unit is appropriate includes whether the unit members share similarities in skills, interests, duties, and working conditions; whether unit members have contact with one another and can transfer classifications, and whether the employer's organizational and supervisory structure is centralized and terms of employment are uniformly applied to unit member. *Armco, Inc. v. NLRB*, 832 F.2d 357 (6th Cir. 1987). The evidence shows that the relevant factors did not change significantly between July 1987, and March 1989, and thus, any changes that Respondent made in the Morristown plant did not affect the appropriateness of the historical bargaining unit.

Changes in operation must result in substantive, significant alterations of working conditions to impact the unit structure or bargaining obligation. See *D & K Frozen Foods*., 293 NLRB 859 (1989). The evidence shows that though there has been a change of resin composition and color, level of quality control and shift in the direction of the business with respect to customers, the evidence also shows that Respondent's painters still paint, molders still mold, and inspectors still inspect small plastic products despite changes in color or weight. If because of changes in operations of the plant, there does exist some question about the scope of the unit, it can be resolved and the unit revised through negotiations, arbitration or a unit clarification proceeding. As can be seen from the terms of the settlement agreement, the parties were able to agree on arbitration as a means to define the unit under the grievance provisions of the agreement. The matter of the Manpower, Inc. employees being in or out of the unit for that period before they are transferred to Respondent's payroll should be decided in this manner. I find it unnecessary to decide whether they should be included in the unit for purposes of determining majority status as their status in that regard is irrelevant given my disposition of all the other issues. In conclusion, I find that the unit description utilized historically at the Morristown facility is currently appropriate.

3. The settlement agreement requires that Respondent bargain with the Union after the 18-month moratorium without regard to majority status

Additionally, while the Respondent contends that the language of the memorandum of agreement does not obligate it to bargain with the Union following the expiration of the 18-month moratorium period, there are numerous reasons, both factual and legal, why this argument is totally unpersuasive. To begin with, even assuming, arguendo, that the agreement actually was silent regarding the Respondent's obligation to bargain (as was the situation in *Straus*), the obligation would still exist. As the Second Circuit pointed out in *Straus* regarding the lack of an explicitly stated obligation:

> The Board could reasonable infer that the Union would not have agreed to withdraw its pending charges unless it was satisfied with the resolution of the issues contained in the complaint, including a commitment by the company to bargain. [625 F.2d at 464.]

In actuality, the agreement at issue is not silent regarding the Respondent's obligation to bargain. By its terms, it merely provides for a period of delay, i.e., a moratorium, prior to the commencement of negotiations. Despite the Respondent's belated attempts to disavow its obligation to bargain in testimony at the hearing, the fact that the Respondent furnished the Union with confidential information, 15 months after the agreement was entered into, which had been requested ''in order to prepare for the upcoming negotiations,'' clearly refutes the idea that there was no discussion regarding the Respondent's obligation during the settlement negotiations. To the contrary, based on the credible evidence of record, I have found that the Respondent did commit itself to bargain after the 18-month delay period.

Many of the same arguments advanced by Respondent were also advanced by the respondent in the recent similar case of *Van Ben Industries*, 285 NLRB 77 (1987), where the Board affirmed the decision of an administrative law judge. The judge in *Van Ben*, at 78–79, found:

> It is settled law that the parties to a settlement agreement resolving refusal to recognize and bargain charges filed under Section 8(a)(5) of the Act by providing for a respondent's assumption of the duty to recognize and bargain with a union as the exclusive collective-bargaining representative of such respondent's employees are entitled to a reasonable period of time after the execution of same in which to conclude an agreement and that during such reasonable period of time, the respondent is precluded from questioning the union's majority

> status. *Poole Foundry Co*., 95 NLRB 34 (1951). The principle has been held firmly applicable to non-Board settlement agreements as involved herein. *VIP Limousine*, 276 NLRB 871 (1985), and *Mammoth of California*, 253 NLRB 1168 (1981). While Respondent asserts that the Board's decision in *Harley-Davidson Co*., 273 NLRB 1531 (1985), holding a successor employer has the right to question a union's majority status at any time should be controlling herein such decision is inopposite [sic] when, as here, the Employer involved entered into a settlement agreement resolving refusal-to-bargain charges, the quid pro quo for the withdrawal of the charges and dismissal of complaint being the Employer's undertaking of the duty to recognize and bargain with the Union for a reasonable period of time unlike the situation in *Harley-Davidson*, supra; where the employer, believing he ''might be a successor'' recognized the union initially, bargained with it and when later faced with proof of employee repudiation of the union withdrew recognition. *Poole Foundry Co*., supra at 36; and, compare *NLRB v. Vantran Electric Corp*., 580 F.2d 921 (7th Cir. 1978). The principle that the parties' agreement, supported by important consideration of both sides including the relinquishment of significant rights ''if it is to achieve its purpose must be treated as giving the parties thereto a reasonable time in which to conclude a contract,'' is too readily apparent a necessary corollary to the parties' agreement to need further explanation, and has been confirmed recently since the *Poole* decision. *VIP Limousine*, supra.

Respondent contends that its situation is distinguishable from the one presented in *Van Ben* because, inter alia, it did not admit that it was a successor corporation to ACI. Because of the settlement being reached before evidence was taken in the prior proceeding, no evidence was adduced concerning the successorship issue. However, in the instant proceeding, evidence was adduced which establishes that Respondent was indeed a successor to ACI and thus, had a bargaining obligation with the Union. Moreover, I believe that Respondent is estopped from relying on this claim. As the Tenth Circuit noted in *W. B. Johnston Grain Co. v. NLRB*, 365 F.2d 582, 587 (10th Cir. 1966):

> It is true that the settlement agreement was not an admission that the Company had been guilty of an unfair labor practice by refusing to bargain, but a party who enters into a valid compromise agreement for the settlement of litigation may not thereafter escape its obligation to carry out the settlement agreement, on the ground that the claim asserted against it, which was settled by the agreement, was groundless.

I further find that the Respondent's assertion that the non-Board settlement here is not entitled to the same treatment as the Board afforded the settlement in *Van Ben* is meritless. It argues that the settlement agreement lacked sufficient Board involvement to find intent for it to incorporate the full complement of statutory bargaining obligations. I disagree. First, Judge Leiner approved the withdrawal of charges by the Union, stating on the record his understanding that the quid pro quo therefor included recognition of the Union by the Respondent. The General Counsel involved in the proceeding was familiar with all of the terms of the agreement and approved of it. The fact that such approval took the form of an affirmative response to the Judge's inquiry as to whether she had no opposition to the agreement does not change the fact that approval was given. Had the General Counsel opposed the agreement, the judge could not have accepted it without full knowledge of its contents. The Regional Director approved the withdrawal of charges with knowledge of the terms of the agreement and himself withdrew the petition for 10(j) relief solely because the refusal to bargain dispute had been settled. The only difference between the instant case and *Van Ben* in this regard is that the settlement was not placed in the record. I cannot see how this difference is significant considering the degree of knowledge of the instant settlement agreement's terms by the judge, the General Counsel, and the Regional Director, all of whom approved the agreement.

I find therefore, that the Union was entitled to an irrebutable presumption of majority status for a reasonable period of time as was the union in *Van Ben*, supra. The Respondent asserts that if that is the case, more than a reasonable period of time elapsed between its recognition of the Union and its assertion that the Union lacked majority status. I disagree. As the Board noted in *Brennan's Cadillac*, 231 NLRB 225, 226 (1977), a ''reasonable time does not depend upon either the passage of time or the number of calendar days.'' Rather, the parties to a settlement agreement are entitled to a reasonable period of time ''in which to conclude a contract'' and the test is whether or not there has been ''a substantial period of time during which good faith negotiations could have ensued.'' *Van Ben*, supra at 79. In *Van Ben*, the judge found that ''negotiations were at a nascent stage when the Respondent severed the [bargaining] relationship . . .'' after one ''preliminary meeting.'' Id. at 79. In the instant case, the Respondent's act of severing the bargaining relationship was even more egregious, as negotiations were completely prevented from taking place at all.

The concept that the reasonable period of time is to be measured by whether or not the parties have an adequate opportunity to bargain, rather than by the passage of time, is clearly illustrated in *All Brand Printing Corp*., 236 NLRB 140 (1978), enfd. 594 F.2d 926 (2d Cir. 1979). In *All Brand* the union was certified as the collective-bargaining representative of the company's skilled employees. The company refused to negotiate, however, claiming that it could not afford a union contract. The union then filed an 8(a)(5) charge, and following an investigation of the charge, the Board issued a complaint. On the same day that the complaint issued, the company filed for chapter 11 bankruptcy. During a recess of the ensuing bankruptcy proceedings, the company and the union entered into a settlement agreement. Under the terms of the agreement, the company promised that it would begin bargaining with the union 60 days after the bankruptcy court worked out an agreement with its creditors. This event did not take place until 3 years later and bargaining did not commence until 4 months further down the road from that. Nevertheless, the Board rejected the company's attempt to establish a good-faith doubt of the union's majority status. Id. at 148. In reaching this decision, the Board, by adoption of the judge's decision, noted:

> [The] Respondent's alleged doubt did not rest on any reasonable basis in fact. Finally, regardless of the merit of the issue, it was an irrelevant issue under the facts of this case, because the bargaining relationship established by the settlement agreement was entitled to a reasonable time in which to function free of any challenge to the Union's majority status, *Poole Foundry and Machine Co.*, supra. 95 NLRB at 36–37, enfd. 192 F.2d at 743–744. [Id. at 148.]

Even in the context of a voluntary grant of recognition, as opposed to recognition granted in a settlement agreement, ''[t]he Board has consistently held that . . . the union is entitled to an irrebuttable presumption of majority status until a reasonable time for bargaining has elapsed.'' *Royal Coach Lines*, 282 NLRB 1037, 1038 (1987). In *Royal Coach Lines*, the employer voluntarily executed an agreement recognizing the union then later refused to bargain because a majority of the unit employees had signed a petition stating that they did not wish to be represented by the union. The Board rejected the employer's argument that the petition gave rise to a good-faith doubt of the union's majority status for the following reasons:

> We need not decide whether the employee petition could support a good-faith doubt as to the Union's majority status or a finding of no majority in fact. A reasonable time for bargaining had not elapsed. Absent a threshold finding that a reasonable time for bargaining has elapsed, evidence of actual employee disaffection with the Union is irrelevant. *Brennan's Cadillac*, above, 231 NLRB at 226. [Id. at 1038.]

In light of the facts of the instant case, where by mutual agreement, the parties precluded any opportunity for bargaining until 18 months after the Respondent had obtained clear title to the plant, it would be virtually impossible to justify a conclusion that a reasonable opportunity for bargaining had elapsed. Therefore, I find that by withdrawing recognition and refusing to bargain with the Union on or about March 31, 1989, Respondent violated and continues to violate Section 8(a)(1) and (5) of the Act.

D. *Respondent's Good-Faith Doubt of Majority Status, Though Found to be Irrelevant, was not Proven in this Record*

As I have found that the Union is entitled to an irrebuttable presumption of majority status for a reasonable period of time after the expiration of the 18-month moratorium, Respondent's assertion of a good-faith doubt of majority status is irrelevant to the disposition of this case. However, it will be addressed in the event it subsequently deemed to have a bearing on the outcome of this case. First, I do not believe that Respondent had a good-faith doubt with respect to the Union's majority status.

1. The Respondent's reasons given to the Union for doubting majority status are not credible

The only reason given to the Union for doubting majority status at the time of the refusal to bargain was the Union's refusal to consent to a card count. I fully agree with General Counsel that the reasons given for requesting the card count are both suspect and fall short of establishing an objective basis for manifesting a good-faith doubt. Hicks testified that the decision to request a card count began when an hourly employee Harold Davis, stated to Respondent's plant personnel manager Harry Parker that the Union had enough cards to organize the plant. At the time of this conversation in March 1989, Parker was aware that the Union had taken the position in recent meetings with employees that the Company had already been recognized by the Respondent. The conversation was relayed to Hicks, who certainly knew that the Union took that position and that it had expressed that position to employees as far back in time as the September 1987 notice to employees from the Union. That same notice encouraged employees to sign *membership* cards to be able to vote in union elections, while noting that the cards had nothing to do with recognition. In fact, Parker testified that he had found a union *membership* card in the plant before his conversation with Davis.

Therefore, Hicks, on hearing of the conversation between Davis and Parker knew full well that the matter of card signing had nothing to do with organizing and recognition, and to the extent that his testimony reflects otherwise, it is not credited as the truth. If he had had any doubts about the status of the Union's recognition, he certainly would not have responded to the Union's information request for the purpose of negotiations in September 1988. Yet, he did respond and furnished the Union with the requested information. After Hicks learned of the Davis-Parker conversation, and more significantly, after the Union's March 10, 1989 request for negotiations from Jeffrey, Hicks visited the Respondent's labor counsel.

Hicks called Jeffrey on the morning of March 20 for the purpose of requesting a card count to verify majority status. Hicks started the conversation by telling Jeffrey ''that we needed to satisfy that question whether they did represent a majority of the employees.'' At this point, Respondent had no right under the law to request such a count. The Company had recognized the Union in the settlement agreement and had continued to reflect recognition in the December 1988 response to the Union's information request. The settlement agreement said nothing about a card count being necessary before bargaining could begin. What then could give rise to the good-faith doubt of majority status that would prompt the card count request.

Hicks and Parker testified that between them they had had conversations with some 10 employees who they felt expressed a desire not to either join or be represented by the Union. These conversations took place when the employee complement of the plant was well over 200 hourly employees. I cannot find that these conversations meet the Board's general test that at least 50 percent of the employees must express dissatisfaction with the Union to give rise to a good-faith doubt of majority status.[5] Close examination of the testimony about these employee conversations will also reflect that Hick's and Parkers' opinion that they reflected a desire not to be represented by the Union was highly subjective. The conversations, to the extent that either Hicks or Parker could recount them seem to me to reflect either a desire not to join the Union and pay dues, or an expression of fear of

[5] See *Forbidden City Restaurant*, 256 NLRB 409, 411 (1982); *Louisiana-Pacific Corp.*, 283 NLRB 1079 (1987).

employer retaliation if they did join the Union. In any event, these conversations are clearly not legally sufficient to raise a good-faith doubt about the Union's majority status.[6]

I have already found that there was nothing in the credited testimony about the Parker-Davis conversation which would create a good-faith doubt. The Board has held that solicitation of membership cards does not raise such a good-faith doubt. See *Odd Fellow Rebekah Home*, 233 NLRB 143 (1977); *Club Cal-Neva*, 231 NLRB 22 (1977); *NLRB v. Washington Manor*., 519 F.2d 750 (6th Cir. 1975). The union witnesses testified that the Union had two reasons for soliciting membership cards: first, International elections required knowing who actually were members and secondly, the cards were to be used once bargaining began. Hicks knew that the cards were unnecessary for recognition.

For the reasons set forth above, I find that Respondent did not have a good-faith doubt about the Union's majority status when it demanded a card count as a precondition to continued recognition or bargaining. As it did not have an objective good-faith doubt of majority status prior to making the card count demand, the request for the card count was improper and the refusal by the Union to submit to such a count cannot form the basis for the Respondent's alleged good-faith doubt. See *VIP Limousines*, supra; *Louisiana Pacific Corp*., supra.

2. After-the-fact reasons asserted by respondent for its alleged good-faith doubt

After withdrawing recognition from the Union, the Respondent has offered certain other reasons for its alleged good-faith doubt which were not communicated to the Union at the time recognition was withdrawn. I do not believe these reasons are properly considered as I firmly believe they played no part in the decision to withdraw recognition and refuse to bargain. However, I will address each such reason advance in order to fully consider all of Respondent's assertions.

a. *The change in the composition of the unit*

I have already found that the changes in Respondent's operations from 1987 to 1989 not to be significant from the standpoint of employee job classifications and the type of work performed. There is no showing whatsoever that any job classification changed or that some other significant change in direction of company operations occurred after March 10, 1989, a date on which the company still recognized the Union with no good-faith doubt as to its majority status. *Martin of Mississippi*, 283 NLRB 258 (1987). Similarly, there is no showing that any significant expansion in the Respondent's work force and increase in employee turnover after March 10, which would supply an objection reason for a good-faith doubt of majority status. If one is to believe that these factors played a role in raising Respondent's good-faith doubt, why did they not come to mind when the Respondent, in December 1988, supplied employee information to the Union to be used in negotiations. Certainly at that juncture, Respondent would have realized that its manner of operation had changed to some degree and that its workforce has significantly grown.

Even though I do not believe that the unit composition factors came to mind as a reason for Respondent alleging a good-faith doubt as to majority status until after recognition had been withdrawn, use of these factors in the circumstances of this case is not legally supportable. The rule that a large turnover of employees unaccompanied by objective evidence that the new employees do not support the union is no evidence of loss of majority status by the Union. See *NLRB v. Hondo Drilling Co*., 525 F.2d 864 (5th Cir. 1976); *NLRB v. Washington Manor, Inc*., supra; *VIP Limousines*, 276 NLRB 871, 878 (1985); *Odd Fellow Rebekah Home*, supra. Respondent herein has failed to offer any objective evidence that would overcome the presumption that new employees support the Union in the same ratio as the employees they replaced. The matter of plant expansion does not offer a valid reason for the expressed good-faith doubt. The expansion had been ongoing since Respondent had gotten clear title to the plant and had been anticipated by the parties before and at the time of the execution of the settlement agreement. See *El Torito-La Fiesta Restaurants*, 284 NLRB 518 (1987); *NLRB v. King Radio Corp*., 510 F.2d 1154 (10th Cir. 1975); *Sahara-Tahoe Hotel v. NLRB*, 581 F.2d 767 (9th Cir. 1978); *Pioneer Inn Casino v. NLRB*, 578 F.2d 835 (9th Cir. 1978).

b. *The Union's involvement with Respondent and unit employees between grant of recognition and withdrawal thereof*

The Respondent now asserts that it doubted the Union's majority status for the additional reasons that the Union had slight contact with it and the bargaining unit after recognition was granted. Specifically, Respondent contends that the Union failed to communicate with it, failed to file grievances, failed to appoint shop steward or other union representatives, failed to hold meetings, and notes that no one ever requested dues check off. I believe the last of these reasons given by Respondent is a good indication of how seriously it takes its own argument. How can there be dues checkoff with no agreement in place between the Union and Respondent calling for such a procedure. How could the Union request dues checkoff when there was an 18-month moratorium in bargaining.

It appears that the Respondent wants to, in the words of the old saying, ''have its cake and eat it, too.'' The terms of the settlement agreement effectively preclude union presence at the Respondents' facility for 18 months. This lack of presence was what the Respondent wanted when it negotiated the settlement. There was no need for shop stewards or local union officers for the moratorium period as they would have had no function under the settlement agreement. There could be no bargaining in that period of time, and the limited grievance procedure specifically called for grievances to be handled by a union International representative, not a company employee. Likewise, there would be no need for meetings until bargaining was to commence, which is when the Union scheduled the meetings. There was no need for local officers until bargaining was to commence, which is when the Union elected local officers. There would be no need to grieve a discharge of a nonprobationary employee

[6] See *United Supermarkets*., 214 NLRB 958, 966 (1974); *Richard O'Brien Plastering*, 268 NLRB 676, 678 (1984); *Northeast Truck Center*, 296 NLRB 753 (1989); *NLRB v. North American Mfg. Co*., 563 F.2d 894 (8th Cir. 1977).

unless a request to grieve was received by the Union, and no requests were received.

Almost immediately after the execution of the settlement agreement, the Union contacted the unit employees and informed them of the terms of the agreement, including the 18-month moratorium. Jeffrey testified without contradiction that he continued to have contact with unit members. Jeffrey contacted the Respondent itself on the only occasion which it would have necessity to make contact, that is, in preparation for bargaining.

It appears to me that the Company did not doubt the majority status when the Union was doing little and maintaining its required low profile under the settlement agreement. The alleged ''doubt'' surfaced only when the Union became active and began to do all the things the Respondent urges a Union should do, seek members, hold meetings, communicate with the employer, elect officers, etc. Under the circumstances, I do not find that the Union's asserted inactivity can form the basis for a good-faith doubt of its majority status. See *Sahara-Tahoe Hotel*, supra; *Pioneer Inn Casino*, supra; *NLRB v. Washington Manor*, supra; *NLRB v. Leatherwood Drilling Co*., 513 F.2d 270 (5th Cir. 1975); *NLRB v. All Brand Printing Corp*., supra; *Amscot Coal*, 281 NLRB 170 (1986); *VIP Limousine*, supra; *NLRB v. North American Mfg. Co*., supra; *Cut & Curl*, 227 NLRB 1869 (1977); *Club Cal-Neva*, 231 NLRB 22 (1977); *Flex Plastics*, 262 NLRB 651 (1982); *U-Save Food Warehouse*, 271 NLRB 710, 717 (1984).

In conclusion, on the matter of Respondent's good-faith doubt about the Union's majority status, I find that Respondent did not have a good-faith doubt when it withheld recognition and refused to bargain. Thus, I again find and conclude that Respondent violated Section 8(a)(1) and (5) when it withdrew recognition from and refused to bargain with the Union.

CONCLUSIONS OF LAW

1. Respondent, Randall Division of Textron, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The employees of Respondent in the unit described below constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All production, laboratory and maintenance employees employed at the Morristown, Indiana facility, but excluding employees who regularly work less than forty (40) hours per month, management trainees, assistant foremen, expediters, layout men, time study men, estimators, draftsmen, administrative personnel, office clericals, professional employees and all guards and supervisors as defined in the Act.

4. At all times since July 13, 1987, the Union has been and is currently the exclusive bargaining representative of the employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. Since on or about March 30, 1989, the Respondent has withdrawn recognition from the Union and has failed and refused to bargain collectively with it as the exclusive collective-bargaining representative of the employees in the unit herein found appropriate, and by virtue of its actions, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has violated Section 8(a)(1) and (5) of the Act, it is recommended that it be ordered to cease and desist and take certain affirmative action necessary to effectuate the policies of the Act.

As the Respondent has unlawfully withdrawn recognition from the Union and failed and refused to bargain collectively with the Union as the exclusive collective-bargaining representative of its employees in the unit found to be appropriate, it is recommended that Respondent be ordered to, on request, extend recognition to the Union and bargain with the Union in good faith with respect to wages, hours of work, and any other terms and conditions of employment of such employees, and to post appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

Respondent, Randall Division of Textron, Inc., Indianapolis, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from and refusing to bargain collectively in good faith concerning wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> All production, laboratory and maintenance employees employed at the Morristown, Indiana facility, but excluding employees who regularly work less than forty (40) hours per month, management trainees, assistant foremen, expediters, layout men, time study men, estimators, draftsmen, administrative personnel, office clericals, professional employees and all guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain collectively in good faith with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive collective-bargaining representative of the employees in the bargaining unit found appropriate

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

above, with respect to their wages, hours of work, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed contract.

(b) Post at its facility in Morristown, Indiana, copies of the attached notice marked ''Appendix.''[8] Copies of said notice, on forms provided by the Regional Director for Region 25, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order, what steps have been taken to comply.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT withdraw recognition from and refuse to bargain in good faith concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All production, laboratory and maintenance employees employed at the Morristown, Indiana facility, but excluding employees who regularly work less than forty (40) hours per month, managmement trainees, assistant foremen, expeditors, layout men, time study men, estimators, draftsmen, administrative personnel, office clericals, professional employees and all guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL, on request, recognize and bargain collectively in good faith with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive collective-bargaining representative of our employees in the bargaining unit described above, with respect to their rates of pay, wages, hours of work, and other terms and conditions of employment and, if an agreement is reached, embody it in a signed contract.

RANDALL DIVISION OF TEXTRON, INC.